U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

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UNITED STATES OF AMERICA

V.

MARCO ANTONIO LAM PERALTA

Docket No. 2:15-cr-152

MOTION TO SUPPRESS STATEMENT

Now comes the Defendant, by and through his undersigned counsel, and moves that the statement obtained from him by law enforcement officers on March 22, 2016 be suppressed and excluded from the evidence at trial in the above-entitled matter. In support of said motion, the Defendant contends that: (1) some custodial interrogation took place prior to the provision of any semblance of a Miranda Warning; (2) though a Miranda Warning in fragmented form may have been delivered, there was no waiver articulated or even implied; (3) the interrogation was not stopped on demand; and (4) in the totality of all the surrounding circumstances, the statement was involuntary.

Statement of Case

On March 22, 2016, three federal agents stopped Mr. Lam on his way back from dropping his child off at school. The agents had an arrest warrant for Mr. Lam and a warrant to search his residence. He was handcuffed, placed in the agents' vehicle and questioned at considerable length, "more than three hours." Prior to advising the Defendant of any of his rights, the agents engaged in a lengthy discussion of how much trouble the Defendant was in and how short-sighted it would be to persist in his claims of innocence. During the pre-warning period, the Defendant either made brief interjections of agreement or commenced protestations of innocence that were quickly interrupted by the agents. The warning itself was somewhat extruded and blighted by metaphor (i.e. "a legal by-product of the double-edged nature of the sword of cooperation"). When the agent subsequently inquired as to his understanding of his rights, the Defendant replied, "Explain to me what's...what's going on..." There followed a lengthy (five pages in the transcript) description of the law enforcement activity in the case followed by the inquiry: "My question to you now is, based on everything that we've said, are you interested in trying to help yourself out and talk with us?" The Defendant responded with another protestation of his innocence. The agent then inquired, "Are you willing to speak truthfully with us about the package that was intercepted last year?"

More than three hours of questioning ensued. After about an hour, the Defendant said, "...you know, it's very hectic to be in handcuff and being over here with three police officers......You scare everybody." The agent claimed that they were trying to make him "more comfortable." The Defendant responded, "You can scare everybody like that and, you know, even though people don't have any....anything to do with anything, you make very...people very uncomfortable because, you know...." A few minutes later Mr. Lam Peralta asked if he could call his wife; the only response he received was a lengthy discussion of his responsibilities to his family. He repeated the same request somewhat later and was told that his wife was at the police station. He expressed concern about his wife's emotional response and asked if he could call his lawyer. The conversation promptly focused on his wife's response. At about the three hour mark, the Defendant became so upset that he began speaking only in Spanish, and the agents were repeating the phrase "nice and calm." A short time later, the Defendant became upset again and resumed speaking in Spanish; the agent kept saying "wait, wait, wait...."

Thus, the interrogation consisted of three and a half hours confined in a minivan with three federal agents. Mr. Lam Peralta had never endured an ordeal like that before, and he was overwhelmed by the experience. As a Guatamalan citizen in federal custody, he was not only unfamiliar with his rights; he was conditioned by his culture and background to assume that he was at the mercy of the federal authorities.

Argument

At the commencement of the interrogation, the agents deferred the delivery of the Miranda Warning while they confronted Mr. Lam Peralta with various pieces of incriminating evidence. This recitation was clearly part of the interrogation strategy, and, predictably, elicited responses from the Defendant. The agents clearly knew within the first few seconds that the Defendant would respond because they kept telling him "don't say anything" when he contradicted them, though they simply continued their strategy when his responses were seemingly in agreement. The agents were clearly aware that their strategy was likely to elicit responses from Mr. Lam Peralta, and therefore violated his constitutional rights as set for in Miranda v. Arizona, 384 U.S. 436 (1966). Rhode Island v. Innis, 446 U.S. 291 (1980).

Though a Miranda Warning was eventually and episodically delivered in about two pages of transcript, the Warning includes a right to decline to answer certain questions but fails to include a right to stop the questioning altogether. While that may have seemed a subtle distinction at the outset, it became progressively more significant over the next three and a half hours.

Whatever rights were warned, there does not seem have been a waiver of those rights. At the conclusion of the warning and the agent's inquiry as to the Defendant's understanding of the warning, there was a nearly five page discussion of the evidence gathered by the investigation. Inquiries were then made as to the Defendant's interest in trying to help himself and willingness to be truthful. The latter inquiry received an affirmative response; the former elicited a claim that the Defendant had nothing to hide. There was no coherent waiver of rights to counsel and to remain silent.

More notably, however, Mr. Lam Peralta invoked his right to counsel in the midst of the interrogation (page 169 of a 289 page transcript). All questioning should have ceased at that moment. Edwards v. Arizona, 451 U.S. 477 (1981). His assertion was in the form of an inquiry, "So, can I call my lawyer....?" However, he was not seeking advice as to his need for counsel; he was inquiring as to whether, in his detained, handcuffed and minivanned state, he would be permitted to call his lawyer at that time. In the context of the interrogation, this was not an idle inquiry but an expression of an immediate desire to consult counsel.

Finally, the totality of circumstances surrounding this interrogation do not support a finding that the statement of the Defendant was voluntary. Confined for three and a half hours in a minivan with three agents, Mr. Lam Peralta was effectively cut off from contact with any support person; his requests to contact his partner, his wife or even an attorney were thwarted. He was not a U.S. citizen, and he came from a native culture in which the police were generally unrestricted by laws or rights. He has had only minimal contact with law enforcement and the criminal justice system. His concern for his family was apparent throughout the interrogation, and he became much more emotional after learning that his wife was at the police station. He clearly became quite emotional and distraught later in the interrogation when he began to speak only in Spanish and the agents were trying to calm him down. His responses were not the result of free and unconstrained choice; his responses were the product of psychological pressure applied to him by the agents in furtherance of their investigation. His will was overbourne. Coulombe v. Connecticut, 367 U.S. 568 (1961).

Conclusion

For the reasons set forth above, the Defendant's statements while in custody on March 22, 2016 should be suppressed and excluded for any purpose from the testimony at trial.

This 27th day of October, 2016.

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Certificate of Service

The undersigned certifies that a copy of this pleading was delivered to the Office of the U.S. Attorney this 27th day of October, 2016.